

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, DECEMBER 8, 2006
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:05 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Ron Agor
Mr. Samuel Gon III
Ms. Taryn Schuman

Mr. Tim Johns
Mr. Jerry Edlao
Mr. Robert Pacheco

STAFF

Ms. Charlene Unoki, Land
Mr. Dan Quinn, State Parks
Mr. Ed Underwood, DOBOR

Mr. Sam Lemmo, OCCL
Mr. Paul Conry, DOFAW

OTHERS

Mr. Bill Wynhoff, Deputy Attorney General
Ms. Linda Chow, Deputy Attorney General, C-5
Ms. Ronnie Grover, E-1
Ms. Lea Wells, J-1
Mr. Bill Yeargan, J-1
Mr. Mark Emmons, J-1
Mr. Max Graham, K-2
Mr. Dann Perrin, D-15
Ms. Linda Collins, E-2
Mr. Nick Dreher, D-14
Mr. Jim Sedill, C-5
Mr. Paul Samarin, J-1
Mr. Myron Thomson, D-14
Mr. Clancy Graft, E-1
Ms. Jan Bell, D-7
Mr. James Speight, J-1
Mr. Marc Ericksen, K-4
Mr. Ed Misaki, C-3

Mr. Steve Dixon, J-1
Mr. Russ Wells, J-1
Mr. Joseph Shacat, J-1
Mr. Mark Snyder, J-1
Ms Karen Yamasato, D-10
Ms. Stephanie Iona, E-2
Mr. Roland Sagum, E-2
Mr. Boone Kauffman, C-5
Mr. Allan Takase, D-5
Mr. Patrick Shaw, J-1
Ms. Julian Kaawa, D-12
Ms. Jan Sam, D-7
Mr. Jim Nishimoto, D-11
Mr. Kevin King, D-16
Mr. Gary Hew, D-2 & 4

{Note: language for deletion is [bracketed], new/added is underlined}

Item A-1 Minutes of November 17, 2006

Unanimously approved as submitted (Agor, Schuman)

Item D-7 Grant of Perpetual, Non-Exclusive Easement to Kona Residence Trust for Access and Utility Purposes, Puuanahulu, North Kona, Hawaii, TMK: (3) 7-1-03: portion of 2 (HDLO/Wesley)

Justice Robert Kline, representing Kona residents, agreed with Staff's recommendations.

Unanimously approved as submitted (Pacheco, Edlao)

Item D-2 Amend Prior Board Action of December 9, 2005 Under Item D-3, Set Aside to County of Kauai for Developing Affordable Housing Purposes, Kekaha, Waimea, Kapaa, Anahola, Kauai, TMK: (4) 1-2-02:32, 1-2-06:18, 4-3-07:07, 08 & 11, 4-6-14:30 & 112 and 4-8-13:13. (KDLO/Thomas).

Gary Hew, representing the Mayor of Kauai, agreed with Staff's recommendations.

Unanimously approved as submitted (Agor, Gon)

Item D-4 Set Aside to County of Kauai for Fire Station Purposes and Issuance of Right-of-Entry Permit to the County of Kauai, Kapaa, Kawaihau, Kauai, TMK: (4) 4-6-14:26 (KDLO/Tommy)

Unanimously approved as submitted (Agor, Schuman)

Item K-2 Conservation District Use Application (CDUA) KA-3379 for a Single Family Residence & Related Improvements Located at Haena, Halelea, Kauai, TMK (4) 5-9-002:059

Applicant/representative agreed with Staff's recommendations.

Unanimously approved as submitted (Agor, Schuman)

Item K-1 Conservation District Enforcement File No. KA 06-72 Regarding Alleged Unauthorized Construction of Chain Link Fence Within the Conservation District Located Makai of 7380 Alealea Road, Wainiha, Hanalei, Kauai, TMK (4) 5-8-009:025

Mr. Sam Lemmo, Administrator for the Office of Conservation and Coastal Lands, reported that the applicant is requesting a deferral because he was unable to attend the

meeting due to a Land Use Commission Hearing. There is a request from someone in Kauai for the Board to take action on this item and are asking for a contested case.

Unanimously approved as deferred (Edlao, Agor)

Item K-3 Conservation District Use Application (CDUA) OA-3305 for an After the Fact Seawall & Drainage Located at Keehi Lagoon, Honolulu, Oahu, Makai of TMK (1) 1-1-003:004

Item K-4 Conservation District Use Application (CDUA) for Small-Scale Beach Nourishment (SSBN) Located at the Maui Lu, Kihei, Maui, Seaward of TMK(s) (2) 3-9-001: 083 & 120

Unanimously approved as submitted (Edlao, Schuman)

Item E-1 Annual Renewal of Revocable Permits (RP's) on the Island of Kauai and Oahu

Mr. Clancy Graft reported that he is not being allowed to run his boat tours up the North shore of Kauai. His CDUP states that he can and he was advised by his lawyers that the CDUP is good for life unless dissolved by the courts.

Chairman Young pointed out that the permits being brought before the Board are for landing and launching within the State park and has nothing to do with the CDUP

Mr. Graft continued to ask for the Board's intervention for his tour boat operation and to enforce the permit give to him 30 years ago.

Chairman Young again clarified that the agenda title was to address "the annula renewal of revocable permits (RP's) on the island of Kauai and Oahu", therefore, Mr. Graft may have to come back before the Board at a later time to address this particular issue.

Ted Myers, brother in-law of Mr. Graft, asked for the renewal of their landing permit.

Ronnie Grover, representing Kauai Sea Tours, stated that they are hoping to get their revocable permit renewed.

Unanimously approved as submitted (Agor, Edlao)

Item E-3 Request for Permission to Hold the Aloha Council, Boy Scouts of America Makahiki at Sand Island State Recreation Area, Oahu.

Mr. Quinn reported that the Boy Scouts have been holding their Makahiki at the NBC Arena and now wants to move to an outdoor arena. For this event, they charge a fee via a booklet full of coupons with the ticket for the Makahiki inside. This event will be held at the very end of the park (ewa side) and will take place over several days. Staff is

recommending that they pay a \$100 a day for the pre-event setup and the post-event break down.

Unanimously approved as submitted (Schuman, Gon)

Item E-2 Request of a One-Year Holdover of Concession Lease No. Sp-0039 for the Kokee Concession, Kokee State Park, Kauai

Letters of testimony were provided from the Lodge at Kokee.

Mr. Quinn reported that the operation of the Kokee concession includes a restaurant, gift shop, and cabins, at the Kokee State Park. The Department issued a short term lease 3 years ago with the intention of putting all the lease properties out at once, including the recreation cabins. Because the Master Plan has not been completed and the final disposition of the recreation cabins has not been resolved, they were unable to put the leases out at the same time. The concession lease expires in December which is why Staff is requesting the one-year holdover. Leasee initial bid was \$226,101 per year, however, they have not been able to generate a profit. The leasee is requesting monthly rent of \$12,000, but Staff's recommendation was \$113,050. Mr. Quinn reported that they were able to agree on an amount of 3% of the concession's gross profit, which ranges from \$40,000 to \$60,000 a month. Based on this, Staff's recommendation is for an initial holdover for 6 months at a rate of 3% of their gross profit.

Chairman Young wished to clarify that the rate of 3% of the gross profits was the gross sales less the cost of goods sold before any other operating expenses. Mr. Quinn confirmed.

The Board:

Amendment to Staff Recommendation:

"That the Board approves a [~~one-year~~] six-month holdover of the Kokee Lodge Concession Lease to the Lodge at Kokee, LCC at [~~the annual rental amount of \$113,050~~] a rate of 3% of gross profits (gross sales less cost of goods sold). All other terms and conditions of the lease will remain unchanged.

Unanimously approved as amended (Agor, Edlao)

Item C-5 Approval of a Cooperative Agreement between U.S. Forest Service and Department of Land and Natural Resources for the Establishment and Administration of the Hawaii Experimental tropical Forest at Laupahoehoe, Hamakua, Hawaii and Puu Waawaa, Kona, Hawaii; and Partial Delegation of Authority for Issuance of Research Permits.

Mr. Paul Conry, Administrator for the Division of Forestry and Wildlife reported that they have no amendments to the submittal. He mentions that the submittal does include the delegation of authority. He recognizes that this is a favorable relationship and is glad to be developing a good working relationship with the U.S. Forest Service. There were 2 representatives from the Forest Service, Boone Kouffman, the director of the Pacific Islands and Jim Sedill, director of the Pacific Southwest.

Board member Edlao inquired whether they were planning to extend the partnership to others, including the University and whether a Hawaiian practitioner would be involved due to culturally sensitive areas. Mr. Conry replied that the committee, for now, is mainly between the agencies, but they will be working with advisory councils, which is part of the agreement. Puu waa already has its advisory committee which has representation from the Hawaiian community and they will set up something similar for Laupahoehoe.

Board Member Pacheco asked about the status of NARS authority to delegate. Mr. Conry replied that currently NARS does not have delegation authority. However, once the NARS rules are approved and finalized, they will be given authority. Mr. Pacheco also questioned if this project was mainly research or resource management. Mr. Conry replied that the agreement is mainly dealing with research, but there might be some ties with resource management. However the department only retains its main land management responsibilities.

Unanimously approved as submitted (Paceho, Gon)

Item D-14 Approval in Principle of an Exchange between the State of Hawaii and Tiana Partners and Hawaiian Humane Society for State-Owned Springing Executory Interest in Land at Niu, Honolulu, Oahu, Tax Map Keys: (1) 3-7-04:01, 02 & 20 and Privately-Owned Land at Niu, Honolulu, Oahu, Tax Map Keys: (1) 3-7-04:02; and

Rescind Prior Board Action of October 28, 1994 Under Agenda Item F-13, Amendment to Prior Board Action of February 12, 1988 (Agenda Item F-24) Relating to an Agreement to Partition Land at Niu Valley, Honolulu, Oahu; Accept Quitclaim to a Portion of Property; Issue Quitclaims to the Remainder of Property; and Set Aside to the Division of Forestry and Wildlife, TMK 3-7-04: 01, 02 & 20. (PROJECT DEVELOPMENT/Gavin)

Unanimously approved as submitted (Schuman, Gon)

Item D-10 Sale of Remnant to Hawaii Preparatory Academy, Auwaiolimu, Honolulu, Oahu, TMK: (1) 2-2-003:94 (ODLO/Robert)

Unanimously approved as submitted (Schuman, Edlao)

Item D-15 **Consent to Assign General Lease No. S-3764, Sugita Enterprises, Ltd. dba Hawaiian Floral Nursery, Assignor, to Coral Shores Enterprises Inc. dba Trade Winds Flower Farm, Assignee, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-010:08. (ODLO/Steve)**

Unanimously approved as submitted (Schuman, Edlao)

Item D-5 **Sale of Remnant State Lands, Abandoned Railroad Right-of-way to Alan S. Takase, Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-57: portion of 01.**

Unanimously approved as submitted (Pacheco, Edlao)

Item D-1 **Amendment to Issuance of a Direct Lease Together with a Construction Right-of-Entry to Sause Bros., Inc., Kalaeloa Barbers Point Harbor, Honouliuli, Ewa, Oahu, Tax Map Key Nos. (1)9-1-14:24 (Por) and (1)9-1-74:37 & 38**

Item D-3 **Issuance of a Long-Term Lease U.S. Department of Agriculture, Animal, Plant and Health Inspection Services, Wildlife Services for Office Kahului Airport.**

Item D-6 **Issuance of a Long-Term Lease U.S. Department of Agriculture, Animal, Plant and Health Inspection Services, Plant Protection and Quarantine for Office at Kahului Airport.**

Item D-8 **Consent to Assign Grant of Easement No. S-27,540, Apollo Energy Corporation, Assignor, to Tawhiri Power LLC, Assignee, Pakini Iki, Ka'u, Hawaii, TMK: (3) 9-3-04: Old Government Road. (HDLO/Gordon)**

Item D-9 **Amend Prior Board Action of April 12, 2001, Agenda Item D-23, Issuance of Revocable Permits to S & S Dairy and Sydney Andrade; Waiohinu, Ka'u, Hawaii, TMK: (3) 9-5-05: portion of 03. (HDLO/Gordon)**

Item D-11 **Amend Prior Board Action of April 22, 2005, under Item D-11, as amended; After-the-Fact Consent to Sublease portions of General Lease No. S-4825, Waikiki Community Center, as Sublessor, to Waikiki Health Center, Waikiki Beach Chaplaincy, Inc., International Church of the Foursquare Gospel, Hawaii Services on Deafness, United Self Help, and Boys and Girls Club of Hawaii, Hawaii non-profit corporations, as Sublessees; Cancellation of General Lease S-4825; and Issuance of a Thirty-year Direct Lease to Waikiki Community Center for Community Center Purposes, Waikiki, Honolulu, Oahu, TMK: (1) 2-6-025:008. (ODLO/Robert)**

- Item D-12** **Consent to Assign General Lease No. S-4894, Julia Minerva Kaawa, Assignor, to BarbaraAnn Kehaunani Kaawa, Jonnett M. K. Kaawa and Minerva Lehua Aana, Assignees, Maunalaha Homesites, Maunalaha, Honolulu, Oahu, TMK: (1) 2-5-24:10 (ODLO/AI)**
- Item D-13** **Cancellation of Revocable Permit No. S-6903 to Kahala Hotel Associates Limited Partnership and Issuance of Revocable Permit to Kahala Hotel Investors, LLC, Kahala, Waialae, Oahu, TMK: (1) 3-5-023:041. (ODLO/Steve)**
- Item D-16** **Amend Prior Board Action of August 24, 2001, Item D-29; Issuance of Lease to Kevin Kinvig and Nora Fisher for Private Noncommercial Pier Purposes Pursuant to Kaneohe Bay Piers Amnesty Program, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-5-047:079. (ODLO/Barry)**
- Item D-18** **Consent to Lease of Lands under Governor's Executive Order Nos. 1763 and 4085 to the City and County of Honolulu, Wahiawa, Oahu, Tax Map Keys: 7-4-06:002 and 012. (ODLO/Cecil)**

Unanimously approved as submitted (Gon, Pacheco)

- Item M-1** **To Issue a Long-Term Master Lease for Various FAA Facilities at Kona International Airport at Keahole. This Will Replace the Current Individual Leases for Each Existing Facility and Include Future FAA Facilities at Kona International Airport at Keahole.**
- Item M-2** **Direct Issuance of a Revocable Permit for a Non-Exclusive Pipeline Easement at Kaunakakai, Molokai, Hawaii.**
- Item M-3** **Issuance of a Revocable Permit for Inconsistent Use Honolulu Freight Service Honolulu International Airport.**
- Item M-4** **Issuance of Master Lease FAA Agreement No. DTFAWP-07-L-00046 United States of America (USA) Federal Aviation (FAA) Kahului Airport.**
- Item M-5** **Amendment No.1 to Lease No. DOT-A-92-0014 Restaurant and Lounge Concession Lease Host International Inc., Kahului Airport.**
- Item M-7** **Direct Issuance of a Revocable Permit for a Non-Exclusive Pipeline Easement at Kawaihae Harbor, Hawaii.**

Unanimously approved as submitted (Pacheco, Schuman)

Item M-6 Direct Issuance of a Revocable Permit to Big Island Topsoil, LLC for the Parking and Storage of Trucks and trailers at Kawaihae Harbor, Hawaii.

Member Schuman recused herself

Unanimously approved as submitted (Agor, Edlao)

Item J-2 Requesting Final Approval of Amendments to Chapter 13-234, Hawaii Administrative Rules, as They Relate to Cruise Ship Fee Increases and Requesting Authorization to Submit the Approved Rule to the Governor for Final Adoption.

Motion made to withdraw item.

Unanimously approved as withdrawn (Agor, Schuman)

Item C-3 Request for Approval of Departmental Policies Relating to the use of Firearms for Natural Resource Management, Aerial Shooting of Feral Animals, and Helicopter Operations.

Mr. Conry reported that this has gone through the consultation process with the districts, divisions, departments, and unions. It is now being submitted for implementation.

Chairman Young asked if any of our Federal partners conduct aerial shootings on feral animals. Mr. Conry replied that they do on Federal lands and that DOFAW follows their safety and operational guidelines. Chairman Young also wished to clarify that this is not a recreational hunting approach. Mr. Conry replied that this is strictly for control of feral animals. He reported that we are under a Federal court order to conduct aerial shootings Mauna Kea and they will perform such activities in NARS and watershed areas as well. This allows for the reduction of animals that would destroy the native ecosystems and it helps to preserve the shed and protected and endangered plants and animals such as the Palilia bird.

Mr. Wayne Johnston, from Animal Rights Hawaii, reported that in the last 2 months, a number of Shearwater chicks were killed by several feral dogs at Kaena Point. Mr. Johnston stated that instead of shooting the dogs, they could have been trapped or translocated; the death sentence was unfair. He is concerned that we teach our children not to kill, but its okay to go up in a helicopter and shoot these poor defenseless animals. It is not a humane thing to do. He believes that we should adopt ways that preserve the Aloha spirit, such as trapping and so on, but it is missing in this slaughter.

Mr. Ed Misaki, Molokai Program Director for the Nature Conservancy and Coordinator of the East Molokai Watershed Patnership, gave a brief history on the aerial shooting on Molokai. The conservation managers on Molokai have been waiting 3 years for this. They want it, have the funding for it, and have the trained shooters who are very

professional on how they do it. Their land owner partners also want it because they want to take care of their land. The lands in these areas are too steep and unsafe and it would be irresponsible to send hunters. The Molokai community also wants it because they are tired of seeing the longest continuous fringing reef impacted by sedimentation caused by erosion. The reef crest and outer reef are fine, but the inner reef flats are being destroyed by land based pollution. Aerial shooting is the one tool that is effective and can safely remove these animals from cliffs and steep gulf areas

Board Member Gon, commented that Kahoolawe had problems with feral goats and aerial shooting removed the last of the goats from the island. Kahoolawe is now the only island in which people can engage in the restoration of native plants without worrying about their survival.

Unanimously approved as submitted (Agor, Schuman)

Item C-2 Request for Approval of a Memorandum of Agreement Between the State of Hawaii Department of Land and Natural Resources and the United State Fish and Wildlife Service.

Item C-4 Establishment of Kokua Partnership Agreement for Kaniakapupu, Nuuanu, Oahu.

Item C-6 Request for Approval to Enter into a Memorandum of Agreement Between Kona BB Property, LLC, d.b.a Kona Village Resort, the State of Hawaii Department of Education West Hawaii Area Complex and the State of Hawaii Department of Land and Natural resources, Division of Forestry and Wildlife, for a Traditional Hawaiian Canoe building Cultural and Educational Project.

Unanimously approved as submitted (Agor, Gon)

Item C-1 Adoption of Amendments to Hawaii Administrative Rules Chapter 13-209 (Rules Regulating Activities Within Natural Area Reserves).

Member Pacheco recused himself.

Unanimously approved as submitted (Agor, Gon)

Item F-1 Request for Final Approval of Revisions to Bottomfish Restricted Fishing Areas coordinates and maps for Hawaii Administrative Rules (HAR) Chapter 13-94, Bottomfish Management

- Item F-2 Request for Approval to Hold Public Meetings and Hearing to Repeal Hawaii Administrative Rules Chapters 13-84, Samoan Crab and 13-92, Opihi and Amend Hawaii Administrative Rules Chapter 13-94, Rules Regulating the Taking and Selling of Certain Marine Resources to Include Amended Rules For the take of Opihi and for the Take of Spiny Lobster, Kona and Samoan Crabs.**

There was added information in Board members packets and a letter from National Marine Fisheries Service in support of F-1.

Unanimously approved as submitted (Pacheco, Gon)

- Item J-3 Request for Approval to Conduct a Public Hearing Regarding Proposed Amendments to Hawaii Administrative Rules Section 13-256-141 as it Relates to the Personal Watercraft Zone in Hilo bay of the East Hawaii Ocean Recreation Management Area (ORMA), Hawaii Island.**

- Item J-4 Request for Approval to Conduct a Public Hearing Regarding Draft Rule Changes to §13-256-63 and a Per-User Fee for Commercial use of Zone “C” of the Shark’s Cove/Three Tables/Waimea Bay Marine Life Conservation District (MLCD) on Oahu.**

- Item L-1 Request for Authorization to Retain Various Consultants and Contactors for the Purpose of Conducting Studies & Assessments; Design and Construction of Slope Stabilization Measures and Other Improvements; as Directed by Act 118, SLH 2006, Relating to Emergency Relief for Natural Disasters.**

- Item L-2 Certification of Election and Appointment of Soil and Water Conservation District Directors.**

- Item L-3 Approval for Award of Construction Contract – Job No. F35B632B, Walkway & Railing Improvements for Akaka State Park Hilo, Hawaii.**

Unanimously approved as submitted (Pacheco, Schuman)

- Item A-1: Minutes of November 17, 2006**

There are some changes being recommended by Forestry and Wildlife that weren’t out in time.

Motion made to amend minutes as circulated.

The Board

Amend C-1, page 4 & 5

“...He reiterated that Kauai does not have an active Trail and Access Citizen Advisory Group, [~~but~~] and reported that it was due to years of lack of quorum. The alignment of the easement was what the public was interested in so when they went out to do the survey, they assumed that the easement chosen would suit[e] the public because it provided shoreline access roughly along the trail in use. There was some deviation along the alignment [~~trying~~] to connect it to next adjoining property owner’s fence, where there was an existing gate. There is a [~~pretentious~~][contentious] situation on claiming the trail in the next parcel so they are land banking the trail and putting it under the Na Ala Hele jurisdiction for regulatory purposes and the land owner offered to do a long term maintenance and [~~managing~~] management of the feature via a MOA. In absence of a Trail and Access Advisory Council, Staff went on, what they felt to be “a good faith effort” to service the community based on their comments during the SMA[/~~C~~DUA] process...

Curt Cottrell reported that he was unsure if the trail alignment in use was the same historic trail because of a tsunami that took place in the 40s which altered the land. When Staff went on site, they followed the alignment that everyone was walking. There is a slight deviation at the terminus heading towards Larson’s Beach at the next adjoining property to connect it to the gap where there is an old gate in the fence...

[~~Max Graham~~] William Tam had photos at his office and asked if the Board would defer until the end of the meeting...”

Unanimously approved as amended (Agor, Gon)

Item J-1 Cancellation of Revocable Permit No. B-03-06, Magic Island Petroleum, Permittee, Upon Cancellation, Issuance of a New Revocable Permit for a Marine Service Station fueling Facility Only, With No Mooring Rental Authority, Ala Wai Small Boat Harbor, Honolulu, Hawaii, Tax Map Key:2-3-37:20.

Chairman Young gave some background information on the situation at the Ala Wai fuel dock. State law allows only 129 live-a-board permits within the Ala Wai harbor. According to Harbor Master Megan Statts, all 129 permits have been issued. Boaters moored at the fuel dock have been permitted to live-a-board which is a violation of the law. The existing permit for the fuel dock is primarily for a fuel dock and convenience store. Discussions are being held with the current permittee to reach an agreement.

Mr. Steve Dickson, executive director of the Hawaii Supreme Court Attorneys and Judges Assistance Program, testified as a private boater on the importance of the fuel dock and his objection to closing it. Chairman Young excused himself.

Lea Wells, teacher at Waianae High School and bookkeeper for Magic Island Petroleum stated it is common knowledge that the mooring income is critical to the operation and survival for store. She provided a financial summary which shows that removal of the mooring income will cause the closure of the store. She felt that DOBOR mischaracterized her efforts at working to compliance in the submittal and that she wasn't cooperative. She states that she was cooperative and that they have been trying to comply. The boats being moored at the fuel dock are 3 storage boats, 3 cruiser boats, the others are waiting for State slips. With the mooring income, they were able to clean up the store, fix the leaking roof, fix the broken gates, repair the broken pump out, allow store hours to be 365 days a year, and offer 24 hr emergency servic. She believes that a 30 day revocable permit is an insane business proposition. Right now the fuel dock is at its healthiest and most functioning point. She wishes them not to accept DOBORs recommendation and to allow them to continue working to the meet standards that are required.

Russell Wells, current manager of the fuel dock, stated that it is impossible for the store to survive without the mooring income. They would experience a \$101,000 loss (over 11 months) without the mooring income. This income is used to pay the basic expenses of the store and to keep it running. He also read a paragraph from a letter that the permittee wrote to Peter Young recently, "The bottom line here is that the loss of the mooring revenue will likely mean the liquidation of the business for Magic Island Petroleum." Without the income, they will be forced to sell or remove all the assets and equipment o the site, leaving no store, no propane, no head pump out, no fuel, no bathrooms, no laundry, and no security. If anyone was to accept the new permit, they would have to rebuild all of it at the cost of several hundred thousands of dollars. No one would make such an investment with only a 30 day permit. He also quoted another quote from the permittee in which he said "I don't think this will work without the slips. I just want to hold on to a permit with the State." He also quoted Tom Bashaw, the previous manager, in which he said "I had the unfortunate experience of managing the fuel dock for 5 months and there is no way to keep it going without the boats." He quoted a previous permittee, Mike Dickson, who said "this store could never make it without the slip revenue." He also mentioned that the current permittee has never been able to take away a profit, even with the slip fees. He believes that this is because within the harbor, the boats just don't move. He estimates barely 15% of all the boats in the Ala Wai ever go anywhere. If they don't go any where, they don't pass the dock because it is located right in front of the harbor channel. They are in the worst location for foot traffic and he believes that it fails all criteria for selecting an optimum store location. The employees of the fuel dock have had to barter for wages and until now, have not been able to afford a competent manager. There is not enough business for the fuel dock to stand on its own. In regards to the moorings, Mr. Wells reported that there are 19 boats and 1 catamaran (which stays only from 7pm-8am). The average length of time that a boat resides at the

fuel dock is 15.8 months. Right now there are 7 storage boats in which no one lives on them, 2 boats for sale with one live-a-board, 3 cruisers in transient waiting for the next weather window, 2 that belong to the store managers, and 5 stay-a-boards. He states that they have a regular turnover, almost 2 times the State rate. Mr. Wells acknowledges that they aren't in compliance with the terms of the permit, but feels that their timing of their response was mischaracterized in the submittal. He believes they have been upfront with all of their violations and with more time, they can come into compliance. The live-a-board moorings have been at the fuel dock for an excess of 20 years and Mr. Wells asks that the permit be rewritten or a sunset provision added to allow for the moorings. He asks the Board not to take away a healthy and functioning part of the Ala Wai and not to cancel the revocable permit and reissue without the slips.

When asked by the Board about the moorings fees, Mr. Wells responded that all of the boats pay a flat fee regardless of size and whether or not they're live-a-boards. Also, in response to a question about his knowledge of the fuel dock being in violation, Mr. Wells responded that he believes the permittee knew, but he only became aware when he had a visit from Mr. Underwood. The communication between him and the permittee was not present due to the absence of the permittee at the business.

Mr. Underwood responded to the Board's question about the last conversation he had with the permittee. He reported that a new revocable permit with out the moorings was proposed and that there was a tentative agreement with the permittee.

In response to a question in regards for the need of the moorings, Mr. Wells reported that 30% of their gross profit comes from the selling of beer and sandwiches, 20% from fuel, and the rest comes from the slips.

The Board asked Mr. Underwood the reason for DOBOR needing to take over the fuel dock slips. Mr. Underwood stated that he feels that the slips should be under DOBORs management and it will increase the number of available berths. This is tied to the renovation of the harbor. Also, since recently being named Administrator, he was following up on all violations. The fuel dock was issued a violation notice on August 24th and no changes were noticed during a September visit, therefore, another notice was issued. His goal is to get as many berths as possible to accommodate the numerous boats on the waiting list.

Bill Yeargan, who works at the fuel dock and is one of the live-a-boards, reported that the permit moorings do allow for overnight stays, not just for fueling. He also noted that utility payments will become an issue if DOBOR takes over the moorings because there is only 1 meter. He wonders how the utilities will be separated and who will take over the security operations. He asked that the Board reconsider DOBORs recommendation and not cancel the permit.

Mark Snyder also moors at the fuel dock. He has been moved around between docks in the Ala Wai and is now moored at the fuel dock while he waits for a State slip. He stated that "if it ain't broke don't fix it."

Joseph Shacat stated that he isn't trying to "jump the line" as Chairman Young had suggested, rather he is just waiting for a State slip. He is on the waiting list at several other harbors and has been told it could be another 5 years till he gets a slip. He asks that the Board to deny DOBORs recommendation.

Mr. Underwood stated that the boats moored at the fuel dock would receive temporary 120 day slips, which would start as soon as the permit expired or is canceled. The boats would be moved to the 700 row and after the 120 days, they would need to be out of Ala Wai Harbor. He also reported that Keehi has 5 live-a-board slips available, there are numerous off shore moorings available, and there are 11 slips at Waianae.

Mr. Yeargan asked how they were to use the 700 row if it is condemned. Mr. Underwood responded that the finger piers were condemned, not the berths.

Bill Cruise stated he was the first boat in the harbor in 1967 and emphasized maintenance of the dock because it has been neglected for so long.

Michael Faust reported that he has seen the Ala Wai Harbor go down hill since the late 1970s. He is a member of the Motor Boat Association and stated that out of 50 states, Hawaii is number 50 in boats per capita, but we are number 2 in shoreline. He believes this is a travesty if the State doesn't invest in these piers right away. There is no reason why Hawaii can't be number 1.

James Speight stated that he believes the meeting is being operated under false assumptions; one of the assumptions being that no one would want to take over the dock without the moorings. He represents an interested investor that would like to take over the permit.

Paula Bundy stated that when she arrived 3 years ago, the previous managers were horrible and felt that she did not receive the Aloha spirit she was hoping for. She believes that the Wells are doing a wonderful job and that the State should stick with the winning team.

Susan Mickley, a cruiser, stated that it is interesting that Hawaii's biggest economy is tourism, but it is well known to boaters up and down the west coast and in Central America, you don't sail to Hawaii. It is hard to find someplace to moor and if you do find somewhere, the boats are holding up the dock. There is a lack of maintenance and the State will be continuing the problem if they shut down the fuel dock and the only sewage pump out. Many of these cruisers have money; they don't need to work, they can travel, and have a substantial amount of income, however, Hawaii does not welcome boaters so they lose this economic, income source.

Paul Samarin stated that he has seen the Ala Wai go from bad to worse, especially the store. He believes that we are the most unfriendly boating state in the nation. In the 12 years he has been here, he has seen the harbor deteriorate. He is unsure of where the

money goes from rent, but he knows that it does not go back into the docks. He believes that the store and fuel dock are a "stunning jewel" in the marina and that we are using a band-aid approach when it is in need of major surgery.

Member Pacheco questioned what the benefit of taking the moorings away from the fuel dock and giving them to DOBOR was. Chairman Young responded that the priority of the fuel dock is for fueling, but it has turned into primarily a place for mooring. The moorings were originally meant for the catamarans and boats in transient or for those rare-times when the harbor was full, but it was never meant for live-a-boards.

Bill Wynchhoff made a motion to the Board

The Board:

Amendment to Staff Recommendation:

"1. Cancel the revocable and all rights of the Permittee and all obligation of the Lessor effective [~~December 17, 2006~~] 30 days after completion of successful negotiations with and for a successor revocable permit, provided that any and all obligations of the lessee which have accrued up to said effective date or which are stated in the permit to survive cancellation shall endure past such cancellation date until duly fulfilled, and further provided that the Lessor reserves the rights and claims allowed by law."

"3. Authorize Chairperson to negotiate and issue a Revocable Permit for a Marine Service Facility on such terms as deemed to be necessary by DOBOR to best service the active users of the Harbor."

"4. Authorize, but not require, DOBOR to retain management of all submerged land surrounding the pier area of Mole B, and Fuel Dock site."

Unanimously approved as amended (Edlao, Schuman)

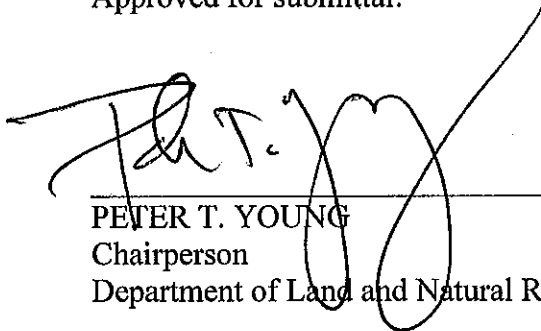
There being no further business, Chairperson Young adjourned the meeting at 12:45 p.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Lauren E. Yasaka", with a long horizontal flourish extending to the right.

Lauren Yasaka

Approved for submittal:

A handwritten signature in cursive script, appearing to read "Peter T. Young", with a large, stylized loop at the end.

PETER T. YOUNG
Chairperson
Department of Land and Natural Resources